IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.572 of 2006

Vijayalakshmi ... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Magistrate and
District Collector,
Thiruvarur District,
Thiruvarur. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the second respondent in connection with G.O.No.D.No.120 Prohibition and Excise (XVI) dated 18.04.2006 and quash the same and produce the body of the detenu viz., Chittu @ Rajasekaran S/o Pandian before this Court and set the detenu Chittu @ Rajasekaran at liberty who has been detained under Act 14/82 at Central Prison, Trichirappalli.

For Petitioner : Mr.J.Nandagopal
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P. SATHASIVAM, J.)

The petitioner, who is the wife of the detenu by name Chittu @ Rajasekaran, who is detained as a ''Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 19.04.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel appearing for the petitioner, by drawing our attention to the details furnished in paragraph 5 of the grounds of detention, has submitted that the detaining authority, even after finding that the bail application that was moved before this Court on 17.04.2006 in Crl.O.P.No.9818/2006 was pending, has concluded that there was real possibility of his coming out on bail by filing another bail application for the above case before the same Court or High Court, which shows the non application of mind on the part of the said authority.

4. In the light of the said contention, we have verified the details furnished in paragraph 5. The detaining authority, after referring the bail applications filed before the Judicial Magistrate, Tiruvarur as well as the District and Sessions Court, Nagapattinam District, referred to the bail application that was filed before this Court on 17.04.2006 in Crl.O.P.No.9818/2006 and also noted that the said petition was pending on the date when he passed the detention order. As rightly pointed out by the learned counsel for the petitioner, the detaining authority has mechanically concluded that "there was real possibility of his coming out on bail by filing another bail application...".

5. In this regard, the learned counsel for the petitioner heavily relied on the earlier Division Bench decision of this Court rendered in HCP No.801/1998 dated 09.11.1999. The Division Bench, in an identical circumstance, after following another decision in HCP No.1709/1998, quashed the order of detention. As rightly pointed out by the learned counsel for the petitioner, the detaining authority has mentioned in one place about the pendency of the bail application filed by the detenu before this Court and in another place he has referred to that there is every possibility of the detenu filing a bail application and hence it is the case of non-application of mind on the part of the detaining authority in passing the impugned order of detention. On this ground, the detention is liable to be quashed and accordingly, the same is quashed.

6. The Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The District Magistrate and District Collector, Thiruvarur District, Thiruvarur.

3. The Superintendent, Central Prison, Tiruchirappalli. (In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

1 CC TO MR.J. NANDAGOPAL, ADVOCATE (SR NO 38203)

HCP. No.572 of 2006

JP(CO)

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